

Message Text

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PAGE 01 PARIS 12732 301929Z

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ACTION SCSE-00

INFO OCT-01 EUR-12 ISO-00 L-03 H-02 DHA-02 SCA-01 DEAE-00

SNM-02 /023 W

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P R 301651Z APR 76

FM AMEMBASSY PARIS

TO SECSTATE WASHDC PRIORITY 429

INFO AMCONSUL BORDEAUX

AMCONSUL LYON

AMCONSUL MARSEILLE

AMCONSUL NICE

AMCONSUL STRASBOURG

UNCLAS PARIS 12732

E.O. 11652: N/A

TAGS: CASC, FR

SUBJECT: W/W ARRESTS

REF: (A) STATE 101873 (NOTAL), (B) MARSEILLE 179 (NOTAL)

1. BASED ON REVIEW OF EMBASSY ARREST CASE FILES AND CANVASS OF CONSTITUENT POSTS, LAPSE OF TIME BETWEEN ARREST AND RECEIPT BY CONSULAR OFFICER OF OFFICIAL WRITTEN NOTIFICATION FROM FRENCH AUTHORITIES VARIES BETWEEN FOUR TO SEVEN DAYS. SUCH NOTIFICATION USUALLY SENT ON DAY CASE PRESENTED TO EXAMINING MAGISTRATE OR (IN CASES OF FLAGRANT DELIT) TRIAL JUDGE, I.E., USUALLY TWO TO THREE DAYS AFTER ARREST AND RECEIVED BY CONOFF IN MAIL TWO TO FOUR DAYS LATER. THIS PATTERN CONSISTENT WITH RECENT MARSEILLE CASE WHERE ARREST MADE FRIDAY APRIL 23RD, TELEPHONIC NOTIFICATION MADE BY MAGISTRATE APRIL 27TH, WRITTEN NOTIFICATION RECEIVED BY CONGEN 28TH AND ARRESTEES VISITED BY CONOFF 29TH.

2. HOWEVER, OFFICIAL WRITTEN NOTIFICATION IS OFTEN DISPENSED WITH IN FAVOR OF INFORMAL NOTIFICATION BY TELEPHONE BY MAGISTRATE WITHIN TWO OR THREE DAYS OF
UNCLASSIFIED

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PAGE 02 PARIS 12732 301929Z

ARREST AND IN SOME CASES BY ARRESTING POLICE WITHIN

FEW HOURS OF ARREST, THUS PERMITTING REASONABLY RAPID RESPONSE BY CONOFF WHO CAN: 1) VISIT DETAINEE BEFORE (RARELY) OR FOLLOWING (USUALLY) HIS FIRST APPEARANCE BEFORE EXAMINING MAGISTRATE: 2) BE PRESENT AT TRIAL IN CASES OF "FLAGRANT DELIT" WHEN TRIAL OFTEN FOLLOWS HARD ON ARREST: OR 3) WHEN CIRCUMSTANCES DO NOT PERMIT IMMEDIATE CONSULAR VISIT, SEND FOUR-PAGE LETTER (EMBASSY) EXPLAINING FRENCH PENAL PROCEDURE AND ENCLOSING LIST OF ATTORNEYS.

3. OF LAST EIGHT ARREST CASES IN PARIS CONSULAR DISTRICT, TWO WERE CASES OF TELEPHONIC NOTIFICATION OF CONOFF BY ARRESTING POLICE ON DAY OF ARREST. AMONG CONSTITUENT POSTS, TELEPHONIC NOTIFICATION OF CONOFF BY POLICE IS FREQUENT AND MORE OR LESS ROUTINE IN SOME AREAS.

4. RE DEPARTMENT'S QUESTIONS ABOUT ACCESS TO ARRESTEE PRIOR TO INITIATION OF JUDICIAL PROCEEDINGS, FRENCH LAW PROVIDES THAT ANYONE SUSPECTED OF CRIMINAL VIOLATION MAY BE HELD WITHOUT RIGHT OF COMMUNICATION, INCLUDING LEGAL COUNSEL, FOR 24 HOURS. FOR CERTAIN CASES, THIS PERIOD CAN BE EXTENDED TO TOTAL OF 72 HOURS. FOR DRUG CASES, THIS "GARDE-A-VUE" PERIOD CAN BE EXTENDED TO TOTAL OF 96 HOURS. BY FRENCH LAW, PERSON UNDER "GARDE-A-VUE" IS NOT YET FORMALLY CHARGED OR EVEN ARRESTED IN ANGLO-SAXON SENSE OF TERM. THUS FOREIGN CONSUL DOES NOT HAVE TO BE NOTIFIED BY FRENCH AUTHORITIES THAT FOREIGN CITIZEN BEING HELD FOR "GARDE-AVUE". IN ANY CASE, IF IMMEDIATE NOTIFICATION IS MADE INFORMALLY BY ARRESTING POLICE, FRENCH PENAL PROCEDURE DOES NOT ALLOW CONSULAR OR OTHER ACCESS TO DETAINEE UNTIL HE IS "ARRESTED" IN FRENCH SENSE OF TERM, I.E. COMMITTED OVER TO EXAMINING MAGISTRATE FOR INVESTIGATION OR TO PROSECUTOR FOR TRIAL.

5. RE CONCERN THAT ARRESTEE BE INFORMED OF RIGHTS, ARTICLE 114 OF FRENCH CODE OF PENAL PROCEDURE REQUIRES EXAMINING MAGISTRATE TO VERIFY IDENTITY OF ACCUSED, INFORM HIM EXPRESSLY OF CHARGES BROUGHT AGAINST HIM. WARN HIM THAT HE HAS RIGHT TO REMAIN SILENT AND ADVISE HIM OF RIGHT TO LEGAL COUNSEL OF OWN CHOOSING OR

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PAGE 03 PARIS 12732 301929Z

APPOINTED BY COURT. EXPERIENCE OF EMBASSY AND CONSTITUENT POSTS IS THAT THIS REQUIREMENT GENERALLY CONSCIENTIOUSLY CARRIED OUT BY FRENCH MAGISTRATES WITH AID OF COURT INTERPRETER. THERE IS PROBABLY SOME SLIPPAGE IN ARRESTEE'S FULL COMPREHENSION OF HIS SITUATION IN ALIEN LEGAL SYSTEM DEPENDING ON QUALITY OF INTERPRETER WHICH VARIES, ESPECIALLY IN PROVINCIAL COURTS. HOWEVER, NEITHER EMBASSY NOR ANY

CONSTITUENT POST HAS ANY RECORD OF COMPLAINT BY A
PRISONER OF VIOLATION OF LEGAL RIGHTS.

6. ARTICLE 34 OF US-FRANCE CONSULAR CONVENTION OF JULY
18, 1966 STIPULATES THAT RECEIVING STATE "IMMEDIATELY
INFORM" CONSULAR OFFICER OF ARREST AND DETENTION IN HIS
CONSULAR DISTRICT OF ALL NATIONALS OF SENDING STATE WHO
REQUEST RECEIVING STATE AUTHORITIES TO DO SO. REGRETTABLY
DIFFERING LEGAL INTERPRETATIONS OF "ARREST" AS
DISCUSSED ABOVE CREATE APPARENT PROBLEM OF "IMMEDIATE"
NOTIFICATION. EMBASSY BELIEVES PROBLEM MORE APPARENT THAN
REAL IN VIEW OF EFFECTIVENESS OF BOTH FORMAL AND
INFORMAL NOTIFICATION IN FRANCE AND ABSENCE OF SERIOUS
OR EVEN MINOR COMPLAINT BY AMERICAN ARRESTEES ABOUT
CONSULAR ACCESS OR VIOLATION OF RIGHTS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 30 APR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976PARIS12732
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760165-0567
From: PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t1976043/aaaaabqi.tel
Line Count: 131
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SCSE
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE 101873
Review Action: RELEASED, APPROVED
Review Authority: ellisoob
Review Comment: n/a
Review Content Flags:
Review Date: 29 SEP 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <29 SEP 2004 by cookms>; APPROVED <03 NOV 2004 by ellisoob>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: W/W ARRESTS
TAGS: CASC, FR
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006